

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

PROGRESSIVE MOUNTAIN
INSURANCE COMPANY,

Petitioner,

v.

ROBERT RADCLIFF,
VBC EXPRESS LOGISTICS, LLC,
KEA TRANSPORTATION GROUP,
LLC, MARGARET MELZER, and
MICHELLE DENNEY, Individually
and as next friend of HUDSON
DENNEY, a minor child,

Respondents.

Civil Action File No.:
1:23-cv-02322-JPB

PROGRESSIVE MOUNTAIN INSURANCE COMPANY’S
MOTION FOR SUMMARY JUDGMENT

COMES NOW, Progressive Mountain Insurance Company (“Progressive”),
and pursuant to Fed. R. Civ. P. 56, files this its Motion for Summary Judgment,
showing the Court as follows:

1.

There are no genuine issues of material fact with regard to Progressive’s
entitlement to summary judgment as to the lack of liability coverage under its
policies issued to VBC Express Logistics, LLC and Kea Transportation Group, LLC

for any claims arising out of the May 10, 2022 motor vehicle accident comprising the basis of this lawsuit.

2.

Progressive is entitled to summary judgment as a matter of law. Progressive owes no coverage and no duty to defend or indemnify against any claims arising from the subject accident because, at the time of the subject accident, Respondent Radcliff was operating the subject vehicle without the permission of VBC Express Logistics or Kea Transportation Group, and, as such, he does not constitute an “insured” under either Progressive policy.

3.

Additionally, though Kea Transportation Group’s Progressive policy contains an MCS-90 endorsement, that endorsement is not applicable as a matter of law because Radcliff was not using the subject vehicle to carry passengers or property and was not engaged in interstate commerce at the time of the accident.

4.

For these reasons, Progressive is entitled to summary judgment.

5.

In support of its Motion, Progressive relies on:

(1) its Statement of Material Facts Not in Dispute;

(2) its Brief in Support of its Motion for Summary Judgment and exhibits thereto:

- a. Examination Under Oath of Joseph Kea;
- b. Examination Under Oath of Victoria Carrington;
- c. Complaint filed in the case of *Margaret Melzer v. VBC Logistics, LLC; KEA Transportation Group, LLC; Progressive Mountain Insurance Company; ABC Corporations 1-5; Robert Radcliff; and John Does 1-5*, Superior Court of Fulton County, Civil Action File No.: 2023CV376502; and

(3) all other pleadings and filings of record.

Respectfully submitted, this 11th day of October, 2024.

LUEDER, LARKIN & HUNTER, LLC

/s/ Jennifer L. Pridgeon

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CERTIFICATION OF COMPLIANCE

The Undersigned Counsel hereby certifies that the foregoing has been prepared using Times New Roman 14-Point Font, as approved in LR 5.1C.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served upon all parties to this matter by filing with the Court's CM/ECF system, which will automatically e-mail notification of same to the following parties of record as follows, and via United States Mail to the default Respondents at the last known address, as follows:

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Respectfully submitted this 11th day of October, 2024.

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